

CHAPTER 13

CONFLICT OF INTEREST

PUBLIC SERVANTS - STATUTORY CONFLICT OF INTEREST [IC 35-44-1-3]

Conflict of Interest

A public servant who knowingly or intentionally has a pecuniary interest in or derives a profit from a contract or purchase connected with an action by the government entity served by the public servant, commits a conflict of interest, a Class D felony. [IC 35-44-1-3(a)]

Exception for Compensation and Expenses

A public servant is not prohibited from receiving compensation for services provided as a public servant or for expenses incurred by the public servant as provided by law. [IC 35-44-1-3(b)]

Other Exceptions

IC 35-44-1-3 does not prohibit a public servant from having a pecuniary interest in or deriving a profit from a contract or purchase connected with the governmental entity served under any of the following conditions:

1. If the public servant is not a member or on the staff of the governing body empowered to contract or purchase on behalf of the governmental entity; the functions and duties the public servant performs for the governmental entity are unrelated to the contract or purchase; and the public servant makes a disclosure as provided in IC 35-44-1-3(d). [IC 35-44-1-3(c)(1)]
2. If the contract or purchase involves utility services from a utility whose rate structure is regulated by the state or federal government. [IC 35-44-1-3(c)(2)]
3. If the public servant was appointed by an elected public servant and makes a disclosure under the procedures in IC 35-44-1-3(d). [IC 35-44-1-3(c)(4)]

Definition of Pecuniary Interest

A public servant has a pecuniary interest in a contract or purchase if the contract or purchase will result or is intended to result in an ascertainable increase in the income or net worth of:

1. The public servant; or
2. A dependent of the public servant who:
 - a. Is under the direct or indirect administrative control of the public servant; or
 - b. Receives a contract or purchase order that is reviewed, approved, or directly or indirectly administered by the public servant. [IC 35-44-1-3(g)]

Definition of Dependent

A dependent may be any of the following:

1. The spouse of a public servant.
2. A child, stepchild, or adoptee of a public servant who is:
 - a. Unemancipated.
 - b. Less than 18 years of age.
3. Any individual more than one-half of whose support is provided during a year by the public servant. [IC 35-44-1-3(k)]

Disclosure Requirements

A disclosure as required above must:

1. Be in writing;
2. Describe the contract or purchase to be made by the governmental entity;
3. Describe the pecuniary interest that the public servant has in the contract or purchase;
4. Be affirmed under penalty of perjury;
5. Be submitted to the governmental entity and be accepted by the governmental entity in a public meeting of the governmental entity prior to final action on the contract or purchase;
6. Be filed within fifteen days after final action on the contract or purchase with; (a) the state board of accounts; and (b) with the clerk of the circuit court in the county where the governmental entity takes final action on the contract or purchase; and
7. Contain, if the public servant is appointed, the written approval of the elected public servant (if any) that appointed the public servant.

Defense

It is a defense in a prosecution under this section that the public servant's interest in the contract or purchase and all other contracts and purchases made by the governmental entity during the twelve (12) months before the date of the contract or purchase was two hundred fifty dollars (\$250) or less. [IC 35-44-1-3 (h)]

Form

A suggested format for the disclosure of conflict of interest for board members and employees is located at the end of this section. The attorney for the governmental entity or a private attorney should be consulted in regard to whether a conflict of interest statement should be filed and whether the format of the disclosure is sufficient.

CONSULTANTS - STATUTORY CONFLICT OF INTEREST [IC 5-16-11]

Conflict of Interest

Pursuant to IC 5-16-11-5.5, a consultant has a conflict of interest if any of the following apply:

1. The entity has given a gift or gifts:
 - a. To the consultant, the consultant's spouse, or the consultant's unemancipated children;
 - b. That have a total fair market value of more than one hundred dollars (\$100); and
 - c. Within the preceding year.
2. The consultant, the consultant's spouse, or the consultant's unemancipated children have an equitable or a legal interest in real property the value of which:
 - a. Either is at least \$5,000 or comprises at least ten percent (10%) of the net worth of the consultant, the consultant's spouse, or the consultant's unemancipated children; and
 - b. Has been or would be increased or decreased if a contract were awarded to the entity.
3. The consultant or the consultant's spouse is employed by the entity.
4. The entity is the sole proprietorship or professional practice of the consultant or the consultant's spouse.
5. The consultant or the consultant's spouse is a partner in the entity.
6. The consultant or the consultant's spouse is an officer or a director of the entity.
7. The consultant, the consultant's spouse, or the consultant's unemancipated children own stock or options to purchase stock in the entity and the stock or the options to purchase stock have a fair market value of more than ten thousand dollars (\$10,000). This subdivision does not apply to the following:
 - a. Time deposits or demand deposits in a financial institution.
 - b. An insurance policy.

Definition of Consultant

"Consultant" means an individual who, under a contract with the state or a political subdivision, does either of the following for the state or the political subdivision:

1. Evaluates bids for contracts.
2. Awards contracts.

The term does not include a public employee (as defined in IC 34-6-2-38).

An individual is not required to be a party to the contract with the state or the political subdivision to be a consultant under this section. [IC 5-16-11-2]

Definition of Entity

As used in this chapter, "**entity**" refers to a person that:

1. Has submitted a bid to be evaluated by a consultant; or
2. Was awarded a contract by a consultant. (IC 5-16-11-3.5)

Disclosure Requirements

A conflict of interest must be disclosed as follows:

1. A consultant shall file a conflict of interest disclosure if the consultant has a conflict of interest under IC 5-16-11-5.5.
2. The disclosure must describe the conflict of interest.
3. The consultant shall file the disclosure within ten (10) days of the earlier of the following events:
 - a. The closing day for receipt of bids.
 - b. The award of the contract.
4. The consultant shall file the disclosure required by IC 5-16-11-6 with the governing board, if the consultant contracts with the political subdivision. [IC 5-16-11-7]
5. The consultant shall make the disclosure required by IC 5-16-11-6 under affirmation. [IC 5-16-11-6,7,8]

Penalties

A consultant who fails to file a disclosure required by this chapter commits a Class A infraction. [IC 5-15-11-11]

A consultant who files a false disclosure under this chapter is subject to the penalties for perjury under IC 35-44-2-1. [IC 5-16-11-12]

LUCRATIVE OFFICE

Article 2, Section 9 of the Constitution of Indiana, states in part: ". . . no person may hold more than one lucrative office at the same time, except as expressly permitted in this Constitution." Any person holding two offices which have been or may be deemed lucrative should obtain the written opinion of the attorney for the unit or units served to determine compliance with Article 2, Section 9 of the Constitution of Indiana.

UNIFORM CONFLICT OF INTEREST DISCLOSURE STATEMENT**Indiana Code 35-44-1-3**

A public servant who knowingly or intentionally has a pecuniary interest in or derives a profit from a contract or purchase connected with an action by the governmental entity served by the public servant commits conflict of interest, a Class D Felony. A public servant has a pecuniary interest in a contract or purchase if the contract or purchase will result or is intended to result in an ascertainable increase in the income or net worth of the public servant or a dependent of the public servant who is under the direct or indirect administrative control of the public servant; or receives a contract or purchase order that is reviewed, approved, or directly or indirectly administered by the public servant. "Dependent" means any of the following: the spouse of a public servant; a child, stepchild, or adoptee (as defined in I.C. 31-3-4-1) of a public servant who is unemancipated and less than eighteen (18) years of age; and any individual more than one-half (1/2) of whose support is provided during a year by the public servant.

The foregoing consists only of excerpts from I.C. 35-44-1-3. Care should be taken to review I.C. 35-44-1-3 in its entirety.

1. **Name and Address of Public Servant Submitting Statement:** _____

2. **Title or Position With Governmental Entity:** _____

3. a. **Governmental Entity:** _____

b. **County:** _____

4. **This statement is submitted (check one):**

a. _____ as a "single transaction" disclosure statement, as to my financial interest in a specific contract or purchase connected with the governmental entity which I serve, proposed to be made by the governmental entity with or from a particular contractor or vendor; or

b. _____ as an "annual" disclosure statement, as to my financial interest connected with any contracts or purchases of the governmental entity which I serve, which are made on an ongoing basis with or from particular contractors or vendors.

5. **Name(s) of Contractor(s) or Vendor(s):** _____

6. **Description(s) of Contract(s) or Purchase(s)** (Describe the kind of contract involved, and the effective date and term of the contract or purchase if reasonably determinable. Dates required if 4(a) is selected above. If "dependent" is involved, provide dependent's name and relationship):

7. **Description of My Financial Interest** (Describe in what manner the public servant or "dependent" expects to derive a profit or financial benefit from, or otherwise has a pecuniary interest in, the above contract(s) or purchase(s); if reasonably determinable, state the approximate dollar value of such profit or benefit.):

(Attach extra pages if additional space is needed)

8. **Approval of Appointing Officer or Body** (To be completed if the public servant was appointed by an elected public servant or the board of trustees of a state-supported college or university):

I (We) being the _____ of
(Title of Officer or Name of Governing Body)

_____ and having the power to appoint
(Name of Governmental Entity)

the above named public servant to the public position to which he or she holds, hereby approve the participation to the appointed disclosing public servant in the above described contract(s) or purchase(s) in which said public servant has a conflict of interest as defined in Indiana Code 35-44-1-3; however, this approval does not waive any objection to any conflict prohibited by statute, rule, or regulation and is not to be construed as a consent to any illegal act.

_____	_____
_____	_____
_____	_____
Elected Official	Office

9. **Effective Dates** (Conflict of interest statements must be submitted to the governmental entity prior to final action on the contract or purchase.):

_____	_____
Date Submitted	Date of Action on Contract or Purchase

10. **Affirmation of Public Servant:** This disclosure was submitted to the governmental entity and accepted by the governmental entity in a public meeting to the governmental entity prior to final action on the contract or purchase. I affirm, under penalty of perjury, the truth and completeness of the statements made above, and that I am the above named public servant.

Signed: _____
(Signature of Public Servant)

Date: _____

Within 15 days after final action on the contract or purchase, copies of this statement must be filed with the State Board of Accounts, Indiana Government Center South, 302 West Washington Street, Room E418, Indianapolis, Indiana, 46204-2765 and the Clerk of the Circuit Court of the county in which the governmental entity executed the contract or purchase. A copy of this disclosure will be forwarded to the Indiana State Ethics Commission.